

**FILED**

DISTRICT COURT OF GUAM

MAY 10 2005

MARY L.M. MORAN  
CLERK OF COURT

DISTRICT COURT OF GUAM  
TERRITORY OF GUAM

111

LOURDES P. AGUON-SCHULTE,

Plaintiff,

vs.

THE GUAM ELECTION COMMISSION,  
GERALD A. TAITANO, in his official  
capacity as the Executive Director of the  
Guam Election Commission, I MINA'  
BENTE SIETE NA LIHESLATURAN  
GUAHAN (The 27<sup>th</sup> Guam Legislature) and  
FELIX P. CAMACHO, in his official  
capacity as the Governor of Guam,

Defendants.

CIVIL CASE NO. 04-00045

(as removed from the Superior Court of Guam  
Civil Case No. CV-1103-04)

JAY MERRILL, on his own behalf and on  
behalf of all other similarly situated voters  
desirous of casting a vote in favor of  
Proposal A at a fair and legal election,

Plaintiffs,

vs.

THE GUAM ELECTION COMMISSION,  
GERALD A. TAITANO, in his official  
capacity as the Executive Director of the  
Guam Election Commission, I MINA'  
BENTE SIETE NA LIHESLATURAN  
GUAHAN (The 27<sup>th</sup> Guam Legislature) and  
FELIX P. CAMACHO, in his official  
capacity as the Governor of Guam,

Defendants.

CIVIL CASE NO. 04-00046

(as removed from the Superior Court of Guam  
Civil Case No. CV-1111-04)

**ORDER**

This matter comes before the Court on Defendants' Motion to Remand and the Attorney

ORIGINAL

1 General's Motion to Strike Appearance by and Pleadings of Private Counsel. These motions  
2 were referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and  
3 General Order No. 04-00016 on December 12, 2004.<sup>1</sup> Docket No. 63. The Magistrate Judge  
4 reviewed the submissions and held oral argument on February 18, 2005. Thereafter the  
5 Magistrate Judge filed his Findings and Recommendations on March 15, 2005. Docket No. 102.  
6 On March 29, 2005 the Attorney General's filed objections to the Findings and  
7 Recommendations. Docket No. 104.

8 The Attorney General states that the Magistrate Judge's recommendation and findings in  
9 effect eviscerate the authority of the Attorney General with "respect to litigation decisions of  
10 agencies and instrumentalities of the Government of Guam." See Docket No. 104, p.2. This  
11 Court does not agree. The Magistrate Judge's analysis does not eviscerate the Attorney  
12 General's authority as much as he seeks to define the balancing act required of the Attorney  
13 General in representing the needs of public with those of elected officials and/or governmental  
14 agencies. There are those instances, when the Attorney General may need to step aside and let  
15 independent counsel represent elected officials and/or public agencies when the Attorney General  
16 is also seeking to represent and protect the public's interests.

17 Under 28 U.S.C. § 636(b)(1)(C), the Court may accept, reject or modify in whole or in  
18 part the Magistrate Judge's recommendation, but must make a *de novo* determination as to any  
19 portion of the recommendation has been filed. Having thoroughly considered the entire case and  
20 relevant law, the Court hereby adopts the Magistrate's Findings and Recommendations in full.  
21 Accordingly, the defendants' Motions to Remand is GRANTED and the Attorney General's  
22 Motion to Strike the Appearances of the Private is DENIED. In addition all remaining motions

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28 <sup>1</sup>At the time of the hearing there were several motions pending before the Magistrate Judge. He decided to consider and rule on the two motions discussed herein first since a decision on those matters could obviate the need to consider the remaining motions.

1 pending are considered moot and will not be further considered by this Court.


2 SO ORDERED this 10 day of May, 2005.

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5 District Judge David O. Carter  
6 United States District Judge  
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21 Notice is hereby given that this document was  
22 entered on the docket on MAY 10 2005.  
23 No separate notice of entry on the docket will  
24 be issued by this Court.

25 Mary L. M. Moran  
26 Clerk, District Court of Guam

27 By:  MAY 10 2005  
28 Deputy Clerk Date

\*The Honorable David O. Carter, United States District Judge for the Central District of California, sitting by designation.